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April 10, 2013

**Notice of Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208; *Technology Transitions Task Force*, GN Docket No. 13-5

Dear Ms. Dortch:

On April 8, 2013, John Murdock, President, and Greg Rogers, Deputy General Counsel, Bandwidth.com, Inc.; Andrea Pierantozzi, Vice President, Voice Services, and Joseph Cavender, Vice President, Federal Regulatory Affairs, Level 3 Communications, LLC; and the undersigned ("CLEC Participants") met with Michael Steffen, Office of Chairman Genachowski; Julie Veach, Chief, Wireline Competition Bureau, and Lisa Gelb and Bill Dever, Wireline Competition Bureau. In the meeting, the CLEC Participants expressed their serious concerns regarding the series of voice over Internet protocol ("VoIP") provider ("Petitioners") petitions seeking limited waiver of Section 52.15(g)(2)(i) to obtain direct access to number resources.

The CLEC Participants emphasized their significant legal concerns with granting the Vonage waiver to conduct a trial before conducting a rulemaking. By granting the Vonage waiver, the Commission continues to act on a discriminatory, piecemeal basis instead of providing transparent due process through a rulemaking. As Commissioner Abernathy said in 2005, echoing similar comments by Commissioners Copps and Adelstein: "I support adhering to the notice-and-comment rulemaking process established by the APA, rather than developing important policies through an ad hoc waiver process."<sup>1</sup> The IP Transition issues the Commission is addressing through the proposed trial should be addressed holistically and comprehensively in

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<sup>1</sup> See Concurring Statement of Commissioner Kathleen Q. Abernathy. *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd. 2957 (2005) ("SBCIS Waiver Order").

existing proceedings, including the *Connect America Fund* FNPRM and the AT&T and NTCA IP interconnection petitions.

The Commission has never addressed in an APA rulemaking the legal and regulatory issues surrounding whether it is good policy to provide numbers to non-carriers, and has never established rules to apply to non-carriers during a trial to protect the legal rights of consumers and other companies interfacing with non-carrier trial participants. A trial before a rulemaking, and particularly one with multiple providers, will effectively change the rules relating to IP interconnection, call routing, porting, and intercarrier compensation, without the requisite APA notice and comment.

The CLEC Participants asserted that if the Commission proceeds with a trial, it should not run concurrently with the NPRM. The NPRM should precede the trial. If the Commission decides not to follow the proper course, it should at least begin and conclude the trial prior to the issuance of an NPRM to allow the results of the trial to inform the NPRM in a transparent and nondiscriminatory manner.<sup>2</sup> The CLEC Participants reiterated that, if there is a trial, there should be reporting requirements, including a requirement to publicly disclose any IP interconnection agreements that any trial participant enters into (and with whom) during the period of the trial along with the material terms, including rates, of those agreements. This is consistent with Vonage's past advocacy in support of nondiscriminatory interconnection requirements.<sup>3</sup> In addition, Vonage has committed to abide by the SBCIS waiver conditions,<sup>4</sup> which include a requirement to file interconnection agreements with the state commissions, or purchase interconnection service "pursuant to a tariff that is generally available to other providers of IP-enabled voice services."<sup>5</sup>

The CLEC Participants emphasized that no company has met the "heavy burden" to demonstrate "special circumstances" that justify a waiver grant. Vonage has never distinguished itself from any of the other fourteen (14) waiver applicants, nor the hundreds of other non-carrier companies that would like to provide deregulated services. The Commission should not delegate to the Bureau the critical role of granting additional waivers, particularly when the Commission has not established a standard to determine which carriers would qualify and which would not. Vonage's "heavy burden" is not met by claiming that the Commission will derive unique new information from a Vonage trial. The Commission has had eight (8) years to study the results of AT&T's waiver and AT&T has indicated its willingness to respond to Staff inquiries with respect to its experience.<sup>6</sup> Vonage has not demonstrated why additional information is required that could not be gleaned from AT&T's experience, or could not be derived after a rulemaking is duly conducted.

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<sup>2</sup> Ex Parte Letter from James C. Falvey, Counsel for CLEC Participants, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 3 (Apr. 4, 2012).

<sup>3</sup> See, e.g., *SBCIS Waiver Order*, ¶ 10, n.48.

<sup>4</sup> Comments of Vonage Holding Corp., CC Docket No. 99-200, at 4 (Jan. 25, 2012)

<sup>5</sup> *SBCIS Waiver Order*, ¶ 10.

<sup>6</sup> Ex Parte Letter from Jay Bennett, AVP Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99-200, at 1 (Apr. 4, 2012)

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The Commission must also ensure that any NPRM is neutral on the myriad issues related to access to numbering by non-carriers. If the Commission predetermines the end result through a trial and/or a predetermined rulemaking, there will be a race to the regulatory bottom, with adverse impacts on competition, universal service, and consumer protections.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ \_\_\_\_\_  
James C. Falvey  
Justin L. Faulb  
*Counsel for CLEC Participants*

cc: Chairman Genachowski  
Michael Steffen  
Julie Veach  
Bill Dever  
Lisa Gelb